



2012-013

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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December 8, 2011

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**SEE ACT 2012-224 BEFORE
RELYING ON THIS OPINION.**

Honorable Art Faulkner, Director
Alabama Emergency Management Agency
Post Office Box 2160
Clanton, Alabama 35046

Storm Shelters – Construction – Rules and
Regulations – Sales – Alabama Manufactured
Housing Commission

The Alabama Manufactured Housing Commission has the statutory authority to regulate the construction, transportation, site location, and manufacturing standards of a manufactured building. Because a storm shelter is defined as a manufactured building, the Alabama Manufactured Housing Commission has the authority to regulate the sale and installation of storm shelters.

Dear Mr. Faulkner:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does the Alabama Manufactured Housing Commission have the power to regulate the sale and installation of all prefabricated storm shelters sold and installed in the State of Alabama?

FACTS AND ANALYSIS

In your letter of request, you informed this Office of the following:

The State of Alabama, and in particular the Alabama Emergency Management Agency, received federal mitigation funds in the aftermath of the April 2011 tornadoes. The State has decided to allocate a certain

percentage of the funds on the construction of storm shelters. The Alabama Manufactured Housing Commission ("AMHC") has asserted jurisdiction over the sale and installation of prefabricated storm shelters in Alabama. The AMHC has asserted that all prefabricated storm shelter manufacturers selling in Alabama must meet the requirements set forth by the AMHC. In addition, the AMHC has asserted that the installation of prefabricated FEMA P-320 storm shelters must be performed by an AMHC-certified modular installer.

Pursuant to section 24-6-2 of the Code of Alabama, the AMHC was created to function as the principal executive branch agency with powers to provide for a comprehensive manufactured and modular housing and building program with respect to construction, transportation, site location, or manufacturing standards for such structures. ALA. CODE § 24-6-2 (Supp. 2011).

Section 24-4A-2(5) of the Code defines "manufacture" as the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials. ALA. CODE § 24-4A-2(5) (2007). In section 24-4A-2(13) of the Code, a "manufactured building" is defined, at the option of the manufacturer, as any building of open construction made or assembled in manufacturing facilities away from the building site. ALA. CODE § 24-4A-2(13) (2007).

Section 24-4A-2(15) defines "open construction" as any building, building component, assembly, or systems manufactured in such manner that all portions can be readily inspected at the site without disassembly, damage to, or construction thereof. ALA. CODE § 24-4A-2(15) (2007). "Install" is defined in section 24-4A-2(6) of the Code as the assembly of a manufactured building on site and the process of affixing a manufactured building to land, a foundation, footings, or an existing building and service connections that are a part thereof. ALA. CODE § 24-4A-2(6) (2007).

The standard for the design and construction of storm shelters was written by the International Code Council ("ICC") and the National Storm Shelter Association ("NSSA"). The current standard in place is the ICC/NSSA 500 Standard for the Design and Construction of Storm Shelters (ICC 500-2008) and is available for adoption and use by any jurisdiction.

The ICC assembles and issues both the International Building Code and the International Residential Code. Pursuant to its rulemaking authority, the AMHC promulgated Rule 535-X-11.03(a) of the Alabama Administrative Code, thereby adopting the standards of the International Building Code regarding the design and fabrication of a manufactured building. Thus, the AMHC has the

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authority to not only adopt model codes, but also to enforce compliance with adopted codes. ALA. CODE § 24-6-4(c) (2007).

In Section 202 of the ICC/NSSA Standard, a storm shelter is defined as a **building**, structure, or portion(s) thereof, constructed in accordance with this standard, designated for use during a severe wind storm event, such as a hurricane or tornado. Storm shelters, by definition, are deemed manufactured buildings. Section 24-4A-3(b) states that "no manufactured building shall be sold, or offered for sale, or installed in this state, unless it is approved and bears the insignia of approval of the commission." ALA. CODE § 24-4A-3(b) (2007). Because a storm shelter is a manufactured building, it is the opinion of this Office that such facility falls under the regulatory authority of the Alabama Manufactured Housing Commission.

CONCLUSION

The Alabama Manufactured Housing Commission has the statutory authority to regulate the construction, transportation, site location, and manufacturing standards of a manufactured building. A storm shelter is a manufactured building. Therefore, the Alabama Manufactured Housing Commission has the authority to regulate the sale and installation of storm shelters.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Stephanie Billingslea of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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